

# State of South Dakota

## EIGHTY-FOURTH SESSION LEGISLATIVE ASSEMBLY, 2009

228Q0643

### HOUSE BILL NO. 1160

Introduced by: Representatives Hunhoff (Bernie), Dennert, Fargen, Juhnke, Kirkeby, and Verchio and Senators Howie, Abdallah, Hundstad, Kloucek, Maher, and Nesselhuf

1 FOR AN ACT ENTITLED, An Act to revise certain provisions requiring the construction of  
2 fences by railroads.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 49-16A-91 be amended to read as follows:

5 49-16A-91. If the owner of a tract of land abutting on a road within this state plans to inclose  
6 the tract and constructs a good and sufficient fence about the tract on all sides except along the  
7 side abutting the road, the railroad shall ~~supply the landowner with the materials needed to~~  
8 construct a fence not less than four and one-half feet high along the side abutting the road. If the  
9 owner incloses a tract of land with a woven wire fence with wires crossing each other close  
10 enough to keep sheep and hogs confined, the railroad shall ~~supply the landowner with the~~  
11 ~~materials needed to~~ construct a like fence along its right-of-way on the side of the tract so far  
12 as it extends along the road. The railroad shall maintain ~~or supply the materials to maintain~~ the  
13 fence in good repair and condition until released by the owner of the tract; or until the owner of  
14 the tract ceases to maintain his portion of the fence in good repair and condition for one year.



1 The requirements of this section do not apply to track that is out of service or is classified as  
2 "excepted" or "Class 1" by the Federal Railway Administration. A railroad is not required to  
3 build fences nor be liable for any damages for refusal to build fences when the earth is frozen.

4 Section 2. That § 49-16A-92 be repealed.

5 ~~—49-16A-92. If the owner of a tract of land has completed his portion of the fence around the~~  
6 ~~proposed inclosure, he shall give written notice of its completion to the railroad on whose road~~  
7 ~~the tract is situated, by service on the railroad describing in the notice the situation of the tract~~  
8 ~~and the appropriate number of acres to be inclosed and the length of the fence required along~~  
9 ~~the line of the railroad to complete the proposed inclosure.~~

10 ~~—The railroad shall supply the materials needed to construct and complete its portion of the~~  
11 ~~fence within forty-five days after the service of the notice.~~

12 Section 3. That § 49-16A-93 be repealed.

13 ~~—49-16A-93. If a railroad neglects or refuses to comply with the requirements of §§ 49-16A-~~  
14 ~~91 and 49-16A-92, the owner of the tract may construct or repair the fence along the road, and~~  
15 ~~the railroad is liable to the owner for an amount not exceeding the actual cost of all materials~~  
16 ~~used in the construction or repair of the fence of like construction but excluding all cost of labor,~~  
17 ~~which may be recovered in a civil action. The railroad is also liable for all damages accruing by~~  
18 ~~reason of its neglect or refusal. However, a railroad is not required to build fences nor be liable~~  
19 ~~for any damages for refusal to build fences when the earth is frozen.~~